

Internal Revenue Service

Department of the Treasury
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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-151915-10

Date:

May 25, 2011

Date =
Husband =
Wife =
Trust =

x =
Entity =
y =
Attorney =
Accounting =
Firm =

Dear :

This letter responds to your letter dated December 7, 2010, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to certain transfers.

Facts

On Date, Husband and Wife created Trust, an irrevocable trust, for the benefit of Husband's and Wife's children and each child's respective issue. In the same year, Husband transferred to Trust an x percent interest in Entity and Wife transferred to Trust a y percent interest in Entity.

Attorney drafted Trust. However, prior to drafting the trust instrument, Attorney advised Husband and Wife that in order to accomplish Husband's and Wife's objectives with

regard to Trust, it was necessary to allocate GST exemption to the transfers to Trust. Husband and Wife agreed with Attorney's advice and each intended to allocate his and her respective GST exemption to their respective transfer on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

To report the transfers and to allocate GST exemption to the transfers, Husband and Wife engaged Attorney to prepare Husband's and Wife's Forms 709. However, in preparing Forms 709 for Husband and Wife, Attorney failed to allocate properly Husband's and Wife's available GST exemption to their respective transfer to Trust. Husband and Wife filed timely his and her respective Forms 709, each unaware that GST exemption had not been allocated properly to their respective transfer.

Years later, Husband and Wife engaged Accounting Firm to prepare federal and state income and gift tax returns for a later tax year. During the firm's review of Husband's and Wife's prior year returns, Accounting Firm noticed that Husband and Wife had not allocated properly his and her respective GST exemption to their respective transfers to Trust on Date.

Husband and Wife each request an extension of time to allocate his and her available GST exemption to his and her respective transfer to Trust.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as effective in the year at issue, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in ' 2642(b)(1) or (2), and an election under ' 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under ' 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in ' 2642(b)(1) or (b)(2) or an election described in ' 2632(b)(3) or (c)(5) under the provisions of ' 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Husband and Wife are each granted an extension of time of 120 days from the date of this letter in which to allocate their respective available GST exemption to their respective transfer to Trust on Date.

The allocations should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709. Two copies of this letter are enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes (1)
Copy of this letter (2)